



**[4910-13]**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 121**

**[Docket No.: FAA-2012-0929; Notice No. 13-02]**

**RIN 2120-AJ17**

**Prohibition on Personal Use of Electronic Devices on the Flight Deck**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The proposed rule would prohibit flightcrew members in operations under part 121 from using a personal wireless communications device or laptop computer for personal use while at their duty station on the flight deck while the aircraft is being operated. This rule, which conforms FAA regulations with recent legislation, is intended to ensure that certain non-essential activities do not contribute to the challenge of task management on the flight deck or a loss of situational awareness due to attention to non-essential tasks.

**DATES:** Send comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Send comments identified by docket number FAA-2012-0929 using any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- Mail: Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations at 202-493-2251.

Privacy: The FAA will post all comments it receives, without change, to <http://www.regulations.gov>, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the Federal Register published on April 11, 2000 (65 FR 19477-19478), as well as at <http://DocketsInfo.dot.gov>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this proposed rule, contact Nancy Lauck Claussen, Air Transportation Division (AFS-200),

Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267-8166; e-mail [Nancy.L.Claussen@faa.gov](mailto:Nancy.L.Claussen@faa.gov).

For legal questions concerning this action, contact Nancy Sanchez, Office of the Chief Counsel, Regulations Division, AGC-200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3073; e-mail [Nancy.Sanchez@faa.gov](mailto:Nancy.Sanchez@faa.gov).

**SUPPLEMENTARY INFORMATION:** See the “Additional Information” section for information on how to comment on this proposal and how the FAA will handle comments received. The “Additional Information” section also contains related information about the docket, privacy, the handling of proprietary or confidential business information. In addition, there is information on obtaining copies of related rulemaking documents.

#### **Authority for this Rulemaking**

The FAA’s authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency’s authority.

This rulemaking is promulgated under the authority described in 49 U.S.C. 44701(a)(5), which requires the Administrator to promulgate regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security, and 49 U.S.C. 44732(d), which requires the Administrator to issue a final rule to carry out the prohibition of personal use of electronic devices on the flight deck by flightcrew members.

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### **I. Overview of Proposed Rule**

The FAA Modernization and Reform Act of 2012 was enacted on February 14, 2012. Section 307 of the Act, Prohibition on Personal Use of Electronic Devices on the Flight Deck, makes it “unlawful for a flight crewmember of an aircraft used to provide air transportation under part 121 of title 14, Code of Federal Regulations, to use a personal wireless communications device or laptop computer while at the flight crewmember’s duty

station on the flight deck of such an aircraft while the aircraft is being operated.” The legislation also states that this prohibition does not apply to the use of a personal wireless communications device or laptop computer for a purpose directly related to operation of the aircraft, or for emergency, safety-related, or employment-related communications, in accordance with procedures established by the air carrier and the FAA. The FAA is proposing to amend part 121 to conform to this legislation. The FAA proposes to amend 14 CFR 121.542 to add language to prohibit flightcrew members operating under part 121 from using a personal wireless communications device or a laptop computer for personal use while at their duty station on the flight deck while the aircraft is being operated. The amended regulatory language will clarify that the prohibition on use of a personal wireless communications device or laptop computer does not apply to the use of a personal wireless communications device or laptop computer for a purpose directly related to the operation of the aircraft, or for emergency, safety-related, or employment-related communications, in accordance with procedures established by the air carrier and approved by the FAA.

## **II. Background**

### **A. Related Rule**

In 1981, the FAA published the Elimination of Duties and Activities of Flightcrew Members Not Required for the Safe Operation of Aircraft Final Rule.<sup>1</sup> This rule, better known as the “Sterile Cockpit” rule, required air carriers operating under parts 121 and 135, as well as flightcrew members in those operations, to ensure that the environment on the flight deck was free from potentially dangerous distractions. The final rule states that air carriers shall not require their flightcrew members to perform non-safety related duties

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<sup>1</sup> 46 FR 5500 (Jan. 19, 1981).

during critical phases of flight and that flightcrew members shall not conduct non-safety related activities which could cause distractions on the flight deck during critical phases of flight. In addition, the rule further states that the pilot-in-command shall not permit any activity during a critical phase of flight which would distract flightcrew members from the performance of their duties which, in effect, extends the sterile cockpit provisions to other crewmembers, such as flight attendants.

The 1981 rule defines the critical phases of flight as all ground operations involving taxi, take-off and landing, and all other flight operations conducted below 10,000 feet, except cruise flight.

The personal use of personal wireless communications devices and laptop computers for non-safety related activities is prohibited by the broad restrictions in the current “Sterile Cockpit” rule during ground operations involving taxi, take-off and landing, and all other flight operations conducted below 10,000 feet. The proposed requirements in this NPRM would extend the prohibition on personal use of personal wireless communications devices and laptop computers to all phases of flight.

#### B. Statement of the Problem

Several recent incidents involving a breakdown of sterile cockpit discipline have prompted Congress to address this issue in the FAA Modernization and Reform Act of 2012. In one instance, two pilots were using their personal laptop computers during cruise flight and lost situational awareness, leading to a 150 mile fly-by of their destination. In another instance, a pilot sent a text message on her personal cell phone during the taxi phase of the flight, after the aircraft pushed back from the gate and before the take-off

sequence. These incidents illustrate the potential for such devices to create a hazardous distraction during critical phases of flight.

This rule is intended to ensure that certain non-essential activities do not contribute to the challenge of task management on the flight deck and do not contribute to a loss of situational awareness due to attention to non-essential activities , as the previously discussed incidents highlight. Situational awareness is an attention based phenomenon that reflects the flightcrew's knowledge of where the aircraft is in regard to location, air traffic control, weather, regulations, aircraft status, and other factors. A lack of situational awareness can affect a pilot's ability to perform effectively regarding aircraft handling, aircraft systems, aircraft mode awareness, environmental hazards, standard operating procedures, and attention to required tasks. When loss of situational awareness occurs, there can be critical consequences, such as missing information from one source when concentrating on another source, altitude or course deviations, dominance of visual cues to the extent that pilots may not hear certain aural warnings, misinterpreting ATC instructions, or experiencing task overload.

An individual can lose situational awareness due to attentional tunneling and attention to non-essential activities. Attentional tunneling is becoming absorbed in a task to the exclusion of other visual and aural inputs, and is also a factor in the breakdown of task management. This is operationally described as “the allocation of attention to a particular channel of information, diagnostic hypothesis, or task goal, for a duration that is longer than optimal, given the expected cost of neglecting events on other channels, failing to consider other hypotheses, or failing to perform other tasks.”<sup>2</sup>

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<sup>2</sup> Wickens, C.D., Alexander, A.L. *Attentional tunneling and task management in synthetic vision displays*. The International Journal of Aviation Psychology, 19(3), 182-199 (2009).

The “party” situation, when a person at a loud crowded party usually listens to one conversation and can easily ignore all others, is a commonplace example of attentional tunneling.<sup>3</sup> In some ways, attentional tunneling helps people handle a situation with a high number of visual and aural inputs. However, it can also block important visual and aural information. Because flightcrew members must attend to many safety-related tasks during aircraft operations and must manage those tasks effectively, attentional tunneling can introduce risks into the system.

Additionally, flightcrew members could lose situational awareness when a personal electronic device used on the flight deck is inconsistent with the type certified flight deck design philosophy. The inconsistency could provide distraction, confusion, and ultimately contribute to a loss of situational awareness.<sup>4</sup>

#### C. National Transportation Safety Board Recommendation

In its recommendations to the FAA regarding the Colgan accident in 2009, the NTSB concluded that because of the continuing number of accidents involving a breakdown in sterile cockpit discipline, collaborative action by the FAA and the aviation industry to promptly address this issue was warranted.

Therefore, the NTSB recommended (A-10-30) that the FAA require all part 121, 135, and 91K operators to incorporate explicit guidance to pilots, including checklist reminders as appropriate, prohibiting the use of personal portable electronic devices on the flight deck.<sup>5</sup>

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<sup>3</sup> Cherry, E.C. ,*On human communication: A review, a survey, and a criticism*. Cambridge: Technology Press, MIT; New York: John Wiley (1957).

<sup>4</sup> See 76 FR 6088 (Feb. 3, 2011).

<sup>5</sup> <http://www.nts.gov/doclib/reports/2010/aar1001.pdf>



In response to NTSB recommendation A-10-30, the FAA issued Information for Operators (InFO) 10003, Cockpit Distractions, on April 26, 2010. The NTSB responded that this action did not fully address the recommendation because the InFO was advisory only.<sup>6</sup> With this proposed rulemaking, the FAA will amend current regulations to prohibit the use of personal wireless communications devices and laptop computers by flightcrew members during all aircraft operations to address this type of distraction on the flight deck.

### **III. Discussion of the Proposal**

#### **A. Requirements**

The proposed requirements would prohibit the personal use of a personal wireless communications device or laptop computer while a flightcrew member is at his or her duty station during all ground operations involving taxi, takeoff and landing, and all other flight operations. The proposed rule does not prohibit the use of personal wireless communications devices or laptop computers if the purpose is directly related to operation of the aircraft, or for emergency, safety-related, or employment-related communications and the use is in accordance with air carrier procedures approved by the Administrator.

The FAA clarifies that “emergency” communications are those related to the safe operation of the aircraft and its occupants, not a flightcrew member’s personal emergency. Additionally, the FAA clarifies that “employment-related” communications are not at the discretion of the pilot but are part of FAA approved operational procedures regarding the use of personal wireless communications devices or laptop computers. For example, in the previously noted situation with pilots who became distracted when using a personal laptop

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<sup>6</sup> The NTSB closed recommendation A-10-30 as unacceptable on June 14, 2012. Summaries of the NTSB and FAA letters on A-10-30 can be found at <http://www.nts.gov/SafetyRecs/Private/history.aspx?rec=A-10-030&addressee=FAA>

while discussing the air carrier's flight scheduling software, the flight schedules may have been "employment-related," but the personal use of laptop computers during the discussion was not part of FAA approved operational procedures and would be prohibited by the proposed rule.

#### B. Current Air Carrier Programs

Several air carriers currently have FAA approved programs or are in the process of developing programs for FAA approval where laptop computers and personal wireless communications devices, such as tablets, are used by flightcrew members for work related activities during flight operations. In some cases, air carriers own the laptop computers and/or personal wireless communications devices used by flightcrew members. In other cases, flightcrew members own the laptop computer and/or personal wireless communications devices.

The FAA clarifies that the provisions of the proposed rule do not require an "ownership" test regarding the laptop computer or personal wireless communications device. These devices can be owned by the air carrier or the flightcrew member. The provisions of the proposed rule require a "use" test. These devices (regardless of who owns them) may not be used for personal use (e.g. personal communications, personal emails, leisure activities, etc) while the flightcrew member is at his or her duty station while the aircraft is being operated.

#### C. Operational Timeframes for Prohibition

Section 307 of the Act states that it is unlawful to use a device for personal use "while the aircraft is being operated". The meaning of an "aircraft being operated" as it pertains to some FAA regulations is very broad, to include being parked at the gate while

passengers are boarding. The FAA clarifies that for the purposes of this rule, the meaning of an “aircraft being operated” mirrors the definition of “flight time” in 14 CFR 1.1.

Therefore, the prohibition on the personal use of laptop computers and personal wireless devices commences at taxi (movement of the aircraft under its own power) and ends when the aircraft is parked at the gate at the end of the flight segment.

#### D. Personal Wireless Communications Device

Section 307 of the Act defines “personal wireless communications device” as a device through which personal wireless services (as defined in Section 332(c)(7)(C)(i) of the Communications Act of 1934) are transmitted.<sup>7</sup> The Communications Act of 1934 states that personal wireless services means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access service.

In general, wireless telecommunications is the transfer of information between two or more points that are not physically connected. In the proposed rule, the FAA retains the same broad category because a list of specific devices would ignore the reality of evolving technology. This broad category of devices includes, but is not limited to, devices such as cell phones, smartphones, personal digital assistants, tablets, e-readers, gaming systems, netbook computers, and notebook computers.

### **IV. Regulatory Notices and Analyses**

#### A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its

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<sup>7</sup> See 47 U.S.C. 332(c)(7)(C)(i).

costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for this determination follows:

The FAA Modernization and Reform Act of 2012, enacted on February 14, 2012, includes Section 307, Prohibition on Personal Use of Electronic Devices on the Flight Deck. The FAA is proposing to amend part 121 to conform to this legislation. The proposed rule would prohibit flightcrew members in operations under part 121 from using

a wireless communications device or laptop computer for personal use while at their duty station on the flight deck while the aircraft is being operated. This proposed rule is intended to ensure that certain non-essential activities do not contribute to the challenge of task management on the flight deck and do not contribute to a loss of situational awareness due to attention to non-essential activities. The FAA expects that this proposed rule reflects current sterile cockpit operating procedures and therefore does not impose more than a minimum cost on any regulated entity.

The FAA has, therefore, determined that this proposed rule is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, and is not “significant” as defined in DOT's Regulatory Policies and Procedures.

#### B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic

impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA Modernization and Reform Act of 2012 was enacted on February 14, 2012. Section 307 of the Act, Prohibition on Personal Use of Electronic Devices on the Flight Deck, the FAA is proposing to amend part 121 to conform to this legislation. The proposed rule would prohibit flightcrew members in operations under part 121 from using a wireless communications device or laptop computer for personal use while at their duty station on the flight deck while the aircraft is being operated. This rule is intended to ensure that certain non-essential activities do not contribute to the challenge of task management on the flight deck and do not contribute to a loss of situational awareness due to attention to non-essential activities. While this proposed rule affects small entities, it merely revises existing FAA rules and does not impose any cost on any regulated entity.

Therefore, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments regarding this determination.

#### C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96-39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for

U.S. standards. The FAA has assessed the potential effect of this proposed rule and has determined that it would have only a domestic impact and therefore no effect on international trade.

#### D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$143.1 million in lieu of \$100 million. This proposed rule does not contain such a mandate.

#### E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there would be no new requirement for information collection associated with this proposed rule.

#### F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

## G. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

## **V. Executive Order Determinations**

### A. Executive Order 12866 and 13563

See the “Regulatory Evaluation” discussion in the “Regulatory Notices and Analyses” section elsewhere in this preamble.

### B. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

### C. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a “significant energy



action” under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

## **VI. Additional Information**

### **A. Comments Invited**

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenter’s should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

### **B. Availability of Rulemaking Documents**

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);

2. Visiting the FAA's Regulations and Policies web page at [http://www.faa.gov/regulations\\_policies](http://www.faa.gov/regulations_policies) or

3. Accessing the Government Printing Office's web page at <http://www.gpo.gov/fdsys/>.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Commenter's must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

#### **List of Subjects in 14 CFR Part 121**

Air carriers, Aircraft, Airmen, Aviation safety, Safety, Transportation.

#### **VII. The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

#### **PART 121--OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS**

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44732, 46105.

2. Amend § 121.542 by adding paragraph (d) to read as follows:

**§ 121.542 Flight crewmember duties.**

\* \* \* \* \*

(d) During all flight time as defined in 14 CFR 1.1, no flight crewmember may use, nor may any pilot in command permit the use of, a personal wireless communications device or laptop computer while at a flight crewmember duty station unless the purpose is directly related to operation of the aircraft, or for emergency, safety-related, or employment-related communications, in accordance with air carrier procedures approved by the Administrator.

Issued in Washington, DC, on January 9, 2013.

John M. Allen,

Director, Flight Standards Service.

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